

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
UNITED STATES OF AMERICA	:	
	:	
- v. -	:	CONSENT PRELIMINARY ORDER
	:	OF FORFEITURE AS TO SPECIFIC
	:	<u>PROPERTY</u>
KENNETH GARCIA,	:	
	:	
Defendant.	:	19 Cr. 793 (JMF)
	:	
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WHEREAS, on or about October 28, 2019, KENNETH GARCIA (the “defendant”), was charged in a two-count Information, 19 Cr. 793 (JMF) (the “Information”), with possession of child pornography, in violation of Title 18, United States Code, Sections 2252(a)(5)(B), (b)(2) and 2 (Count One); and receipt and distribution of child pornography, in violation of Title 18, United States Code, Sections 2252A(a)(2)(B), (b)(1) and 2 (Count Two);

WHEREAS, the Information included a forfeiture allegation for Counts One and Two, seeking forfeiture to the United States, pursuant to Title 18, United States Code, Section 2253, of any and all property, real or personal, constituting or traceable to gross profits or other proceeds obtained from the offenses and any and all property, real or personal, used or intended to be used to commit or promote the commission of said offenses or traceable to such property, including but not limited to a sum of money in United States currency representing the amount of proceeds traceable to the commission of the offenses.

WHEREAS, on or about June 2, 2021, the defendant pled guilty to Count One, pursuant to a plea agreement with the Government, wherein the defendant admitted the forfeiture allegation with respect to Count One and agreed to forfeit, to the United States, pursuant to Title 18, United States Code, Section 2253, all right, title, and interest of the defendant in the following specific property, all of which were seized from the defendant on or about May 2, 2019:

- a. one Android Shield Tablet,
- b. one gold Samsung Galaxy S5 SM-G900P cellphone, and
- c. an Alienware laptop with Serial Number 5R5JYN1

(a through c collectively, the “Specific Property”);

WHEREAS, the defendant further consents to the forfeiture of all his right, title and interest in the Specific Property, which constitutes property used or intended to be used to facilitate the offense charged in Count One of the Information;

WHEREAS, pursuant to Title 21, United States Code, Section 853(g), and Rules 32.2(b)(3), and 32.2(b)(6) of the Federal Rules of Criminal Procedure, the Government is now entitled, pending any assertion of third-party claims, to reduce the Specific Property to its possession and to notify any and all persons who reasonably appear to be a potential claimant of their interest herein;

IT IS HEREBY STIPULATED AND AGREED, by and between the United States of America, by its attorney Audrey Strauss, Acting United States Attorney, Assistant United States Attorney, Michael Herman of counsel, and the defendant, and his counsel, Andrew Dalack, Esq., that:

1. As a result of the offenses charged in Count One of the Information, to which the defendant pled guilty, all of the defendant’s right, title and interest in the Specific Property is hereby forfeited to the United States for disposition in accordance with the law, subject to the provisions of Title 21, United States Code, Section 853.

2. Pursuant to Rule 32.2(b)(4) of the Federal Rules of Criminal Procedure, this Consent Preliminary Order of Forfeiture as to Specific Property is final as to the defendant,

KENNETH GARCIA, and shall be deemed part of the sentence of the defendant, and shall be included in the judgment of conviction therewith.

3. Upon entry of this Consent Preliminary Order of Forfeiture as to Specific Property, the United States (or its designee) is hereby authorized to take possession of the Specific Property and to hold such property in its secure custody and control.

4. Pursuant to Title 21, United States Code, Section 853(n)(1), Rule 32.2(b)(6) of the Federal Rules of Criminal Procedure, and Rules G(4)(a)(iv)(C) and G(5)(a)(ii) of the Supplemental Rules for Certain Admiralty and Maritime Claims and Asset Forfeiture Actions, the United States is permitted to publish forfeiture notices on the government internet site, www.forfeiture.gov. This site incorporates the forfeiture notices that have been traditionally published in newspapers. The United States forthwith shall publish the internet ad for at least thirty (30) consecutive days. Any person, other than the defendant, claiming interest in the Specific Property must file a Petition within sixty (60) days from the first day of publication of the Notice on this official government internet web site, or no later than thirty-five (35) days from the mailing of actual notice, whichever is earlier.

5. The published notice of forfeiture shall state that the petition (i) shall be for a hearing to adjudicate the validity of the petitioner's alleged interest in the Specific Property, (ii) shall be signed by the petitioner under penalty of perjury, and (iii) shall set forth the nature and extent of the petitioner's right, title or interest in the Specific Property, the time and circumstances of the petitioner's acquisition of the right, title and interest in the Specific Property, any additional facts supporting the petitioner's claim, and the relief sought, pursuant to Title 21, United States Code, Section 853(n).

6. Pursuant to 32.2 (b)(6)(A) of the Federal Rules of Criminal Procedure, the Government shall send notice to any person who reasonably appears to be a potential claimant with standing to contest the forfeiture in the ancillary proceeding.

7. Upon adjudication of all third-party interests, this Court will enter a Final Order of Forfeiture with respect to the Specific Property pursuant to Title 21, United States Code, Section 853(n), in which all interests will be addressed.

8. Pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, the United States Attorney's Office is authorized to conduct any discovery needed to identify, locate or dispose of forfeitable property, including depositions, interrogatories, requests for production of documents and the issuance of subpoenas.

9. The Court shall retain jurisdiction to enforce this Consent Preliminary Order of Forfeiture as to Specific Property, and to amend it as necessary, pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure.

10. The Clerk of the Court shall forward three certified copies of this Consent Preliminary Order of Forfeiture as to Specific Property to Assistant United States Attorney Alexander J. Wilson, Co-Chief of the Money Laundering and Transnational Criminal Enterprises Unit, United States Attorney's Office, One St. Andrew's Plaza, New York, New York 10007.

11. The signature page of this Consent Preliminary Order of Forfeiture as to Specific Property may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

AGREED AND CONSENTED TO:

AUDREY STRAUSS
United States Attorney for the
Southern District of New York

By: Michael R Herman
MICHAEL HERMAN
Assistant United States Attorney
One St. Andrew's Plaza
New York, NY 10007
(212) 637-2221

5/28/2021

DATE

KENNETH GARCIA

By: Kenneth Garcia
KENNETH GARCIA

6/2/2021
DATE

By: Andrew Dalack
Andrew Dalack, Esq.
Attorney for Defendant
52 Duane Street, 10th Floor
New York, NY 10007

6/2/2021
DATE

SO ORDERED:

Jesse M. Furman
HONORABLE JESSE M. FURMAN
UNITED STATES DISTRICT JUDGE

6/2/2021
DATE